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**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2007-1776-WQ-E TCEQ ID: RN104950134 CASE NO.: 34840**  
**RESPONDENT NAME: City of Arlington**

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> City of Arlington Collection System, located at 101 West Abram Stereet with a collection line located at the intersection of Central Park Drive and Matlock Road, Arlington, Tarrant County</p> <p><b>TYPE OF OPERATION:</b> Wastewater collection system</p> <p><b>SMALL BUSINESS:</b>    <input type="checkbox"/> Yes    <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on July 7, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b> TCEQ Attorney/SEP Coordinator: Ms. Sharon Blue, SEP Coordinator, Litigation Division, MC 175, (512) 239-2223 TCEQ Enforcement Coordinator: Mr. J. Craig Fleming, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-5806; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: The Honorable Robert Cluck, Mayor, City of Arlington, P. O. Box 90231, Arlington, Texas 76004 Ms. Julia J. Hunt, P.E., Director of Water Utilities, City of Arlington, P. O. Box 90231, Arlington, Texas 76004 Respondent's Attorney: Mr. Brad B. Castleberry, Lloyd Gosselink Blevins Rochelle &amp; Townsend, P.C., 816 Congress Avenue, Suite 1900, Austin, Texas 78701</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> July 30, 2007</p> <p><b>Date of NOV/NOE Relating to this Case:</b> October 3, 2007 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation. This unauthorized discharge resulted in a fish kill of 2,249 fish.</p> <p><b>WATER</b></p> <p>Failure to prevent an unauthorized discharge. Specifically, a 15 inch vitrified clay pipe broke releasing an estimated 4,800 gallons of wastewater into an unnamed creek, through a concrete channel, and into two ponds in front of the Franciscan Apartments located at the intersection of Central Park Drive and Matlock Road [TEX. WATER CODE § 26.121(a)].</p>	<p><b>Total Assessed:</b> \$10,000</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$10,000</p> <p><b>Total Paid to General Revenue:</b> \$0</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input type="checkbox"/> Average <input checked="" type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p> <p><b>Findings Orders Justification:</b></p> <p>Environmental receptors have been exposed to pollutants which exceed levels that are protective.</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the City has implemented the following corrective measures at the Site:</p> <p>a. The sewer line was repaired by 3:30 a.m. on July 31, 2007;</p> <p>b. The sewer line was re-cleaned and video inspection conducted by 9:00 a.m. on July 31, 2007, to ensure the repairs were completed and that there was no other damage to the line;</p> <p>c. The clean-up of the fishkill was completed on August 1, 2007;</p> <p>d. Samples were taken along the creek to establish the limits of the affected area;</p> <p>e. Aerators were placed in the creek and ponds, and ran through August 2, 2007; and</p> <p>f. Samples taken at various points along the creek and pond areas on August 3, 2007 determined that no sewage was present.</p> <p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to implement and complete a Supplement Environmental Project (SEP). (See Attachment A).</p>

Additional ID No(s): RN104950134

**Attachment A**  
**Docket Number: 2007-1776-WQ-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

**Respondent:** City of Arlington

**Penalty Amount:** Ten Thousand Dollars (\$10,000)

**SEP Offset Amount:** Ten Thousand Dollars (\$10,000)

**Type of SEP:** Household hazardous waste and pharmaceuticals collection events  
(Pre-approved concept)

**Location of SEP:** Tarrant County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset the administrative Penalty Amount assessed in this Agreed Order for the Respondent to perform a Supplemental Environmental Project ("SEP"). The SEP Offset Amount is set forth above and such offset is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1) Project Description**

**A. Description**

The Respondent shall conduct at least two city-wide pharmaceutical collection events to provide city-wide collection and proper disposal of pharmaceuticals at no cost to the public. The events will include collection and proper disposal of pharmaceuticals, including those that may be considered to have endocrine disrupting effects. The Respondent may conduct these events concurrently with planned household hazardous waste collection events. The Respondent shall ensure that the events:

- occur on weekends during daylight hours;
- offer to the public convenient drop-off locations;
- are advertised in flyers placed in utility bills or mail-outs, or advertised in at least one newspaper of large circulation in the community

The Respondent shall collect the pharmaceuticals and shall contract with a licensed hauler to transport and properly dispose of the collected materials. The Respondent shall use the SEP Offset Amount only for the direct cost of implementing the project and no portion shall be spent on administrative costs. SEP monies will be used for equipment such as collection bins, overtime labor of employees, public announcement of the event, and transport and disposal fees. The Respondent shall perform this project in accordance with all federal, state and local laws and regulations.

The Respondent certifies that there is no prior commitment to do these projects and that they are being performed solely in an effort to settle this enforcement action.

**B. Environmental Benefit**

This SEP will provide a discernible environmental benefit by providing for the proper disposal of harmful chemicals that can leach into the soil, water, and air. The events are designed to help alleviate the threat to



wildlife posed by improperly disposed pharmaceuticals, which can cause endocrine disruption and affect other biological processes.

C. Minimum Expenditure

The Respondent shall spend at least the Offset Amount to complete the project described above and comply with all other provisions of this Attachment A. The Respondent recognizes that additional funds over and above the SEP Offset Amount may be necessary to conduct the event.

**2. Performance Schedule**

A. Schedule

Within one year after the effective date of this Agreed Order, the Respondent shall complete the projects and submit all reports described below.

**3. Reporting**

A. Progress Reports

Within 90 days after the effective date of this Agreed Order, the Respondent shall submit a report to the TCEQ indicating the progress made to date on the Projects and setting forth a schedule for achieving completion within the time required above. The Respondent shall thereafter report in 90-day increments on the performance of the Projects.

B. Final Report

Within 45 days after completion of the project, the Respondent shall submit to TCEQ a report which includes:

1. An itemized list and total of costs and expenditures incurred with receipts, copies of checks, or other verifying documentation attached;
2. Manifests showing proper transport and disposal or recycling of collected materials;
3. The quantity of materials collected such as number and types of pharmaceuticals collected, etc;
4. Photographs of the project;
5. A statement of quantifiable environmental benefits; and
6. Any additional information the Respondent believes will demonstrate compliance with this Attachment A.

C. Address

The Respondent shall submit all SEP reports and any requested additional information to the following address:

Litigation Division  
Attention: SEP Coordinator, MC 175



Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**4. Additional Information and Access**

The Respondent shall provide any additional information required by TCEQ staff and allow access to all records related to the receipt and expenditure of SEP funds. The Respondent shall also allow a representative of the TCEQ access to the site of any work being financed in whole or in part by SEP funds. This provision survives the termination of this Agreed Order.

**5. Failure to Fully Perform**

If the Respondent does not perform its obligations under this SEP in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Offset Amount.

In the event of incomplete performance, the Respondent shall include on the check the docket number of this Agreed Order and a note that it is for reimbursement of a SEP. The Respondent shall make the payment for the remaining amount due to "Texas Commission on Environmental Quality" and mail it to:

Litigation Division  
Attention: SEP Coordinator, MC 175  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**6. Publicity**

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

**7. Clean Texas Program**

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program. Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

**8. Other SEPs by TCEQ or Other Agencies**

The SEP identified in this Agreed Order has not been, and shall not be, included as a SEP for the Respondent under any other orders negotiated with the TCEQ or any other agency of the state or federal government.







Policy Revision 2 (September 2002)

## Penalty Calculation Worksheet (PCW)

PCW Revision September 19, 2007

TCEQ

DATES	Assigned	3-Oct-2007	Screening	22-Oct-2007	EPA Due	
	PCW	22-Jan-2008				

## RESPONDENT/FACILITY INFORMATION

Respondent	City of Arlington		
Reg. Ent. Ref. No.	RN104950134		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

## CASE INFORMATION

Enf./Case ID No.	34840	No. of Violations	1
Docket No.	2007-1776-WQ-E	Order Type	Findings
Media Program(s)	Water Quality	Enf. Coordinator	J. Craig Fleming
Multi-Media		EC's Team	Enforcement Team 3
Admin. Penalty \$	Limit Minimum	\$0	Maximum
			\$10,000

## Penalty Calculation Section

## TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1  \$10,000

## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History  25% Enhancement Subtotals 2, 3, & 7  \$2,500

Notes

A 25% enhancement recommended for one agreed order without denial of liability.

## Culpability

 No 0% EnhancementSubtotal 4  \$0

Notes

The Respondent does not meet the culpability criteria.

## Good Faith Effort to Comply

 25% ReductionSubtotal 5  \$2,500

Before NOV

NOV to EDP RP/Settlement Offer

Extraordinary

Ordinary

N/A

(mark with x)

Notes

The Respondent repaired the sewer line and remediated the Site by August 1, 2007.

 0% Enhancement\*Subtotal 6  \$0Total EB Amounts  \$504

Approx. Cost of Compliance

 \$10,000

\*Capped at the Total EB \$ Amount

## SUM OF SUBTOTALS 1-7

Final Subtotal  \$10,000

## OTHER FACTORS AS JUSTICE MAY REQUIRE

 0%Adjustment  \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount  \$10,000

## STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty  \$10,000

## DEFERRAL

 0%

Reduction

Adjustment  \$0

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

No deferral is recommended for Findings Orders.

## PAYABLE PENALTY

 \$10,000

Screening Date 22-Oct-2007

Docket No. 2007-1776-WQ-E

PCW

Respondent City of Arlington

Policy Revision 2 (September 2002)

Case ID No. 34840

PCW Revision September 19, 2007

Reg. Ent. Reference No. RN104950134

Media [Statute] Water Quality

Enf. Coordinator J. Craig Fleming

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	1	25%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 25%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

A 25% enhancement recommended for one agreed order without denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 25%

<b>Screening Date</b> 22-Oct-2007		<b>Docket No.</b> 2007-1776-WQ-E		<b>PCW</b>	
<b>Respondent</b> City of Arlington		<small>Policy Revision 2 (September 2002)</small>			
<b>Case ID No.</b> 34840		<small>PCW Revision September 19, 2007</small>			
<b>Reg. Ent. Reference No.</b> RN104950134					
<b>Media [Statute]</b> Water Quality					
<b>Enf. Coordinator</b> J. Craig Fleming					
<b>Violation Number</b>		<div style="border: 1px solid black; text-align: center; width: 100px;">1</div>			
<b>Rule Cite(s)</b>		<div style="border: 1px solid black; text-align: center; padding: 5px;">Tex. Water Code § 26.121(a)</div>			
<b>Violation Description</b>		<div style="border: 1px solid black; padding: 5px;">Failed to prevent an unauthorized discharge. Specifically, a 15-inch vitrified clay pipe broke releasing an estimated 4,800 gallons of wastewater into an unnamed creek, through a concrete channel, and into two ponds in front of the Franciscan Apartments located at the intersection of Central Park Drive and Matlock Road. The release resulted in the killing of 2,249 fish per the Respondent's letter dated August 3, 2007.</div>			
<b>Base Penalty</b>					<div style="border: 1px solid black; text-align: center; width: 100px;">\$10,000</div>

**>> Environmental, Property and Human Health Matrix**

<b>OR</b>		<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor	
	Actual	<div style="border: 1px solid black; text-align: center;">x</div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	
	Potential	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<b>Percent</b> <div style="border: 1px solid black; text-align: center; width: 50px;">50%</div>

**>> Programmatic Matrix**

	<b>Falsification</b>	Major	Moderate	Minor	
	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	
					<b>Percent</b> <div style="border: 1px solid black; text-align: center; width: 50px;">0%</div>

<b>Matrix Notes</b>	Human health or the environment has been exposed to pollutants which exceed levels that are protective of human health or environmental receptors as a result of this violation.
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<b>Adjustment</b>	<div style="border: 1px solid black; text-align: center; width: 100px;">\$5,000</div>
	<div style="border: 1px solid black; text-align: center; width: 100px;">\$5,000</div>

**Violation Events**

<b>Number of Violation Events</b>	<div style="border: 1px solid black; text-align: center; width: 50px;">2</div>	<b>Number of violation days</b>	<div style="border: 1px solid black; text-align: center; width: 50px;">2</div>
<small>mark only one with an x</small>	<div style="border: 1px solid black; padding: 2px;">daily <div style="border: 1px solid black; text-align: center; width: 30px;">x</div></div> <div style="border: 1px solid black; padding: 2px;">monthly <div style="border: 1px solid black; width: 30px; height: 15px;"></div></div> <div style="border: 1px solid black; padding: 2px;">quarterly <div style="border: 1px solid black; width: 30px; height: 15px;"></div></div> <div style="border: 1px solid black; padding: 2px;">semiannual <div style="border: 1px solid black; width: 30px; height: 15px;"></div></div> <div style="border: 1px solid black; padding: 2px;">annual <div style="border: 1px solid black; width: 30px; height: 15px;"></div></div> <div style="border: 1px solid black; padding: 2px;">single event <div style="border: 1px solid black; width: 30px; height: 15px;"></div></div>	<b>Violation Base Penalty</b> <div style="border: 1px solid black; text-align: center; width: 100px;">\$10,000</div>	

Two daily events are recommended from the date of discharge to date clean-up operations were completed.
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<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
<b>Estimated EB Amount</b> <div style="border: 1px solid black; text-align: center; width: 100px;">\$504</div>	<b>Violation Final Penalty Total</b> <div style="border: 1px solid black; text-align: center; width: 100px;">\$10,000</div>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <div style="border: 1px solid black; text-align: center; width: 100px;">\$10,000</div>	

**Economic Benefit Worksheet****Respondent** City of Arlington**Case ID No.** 34840**Reg. Ent. Reference No.** RN104950134**Media** Water Quality**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	No commas or \$					

**Delayed Costs**

Equipment			0.0	\$0	\$0	\$0
Buildings			0.0	\$0	\$0	\$0
Other (as needed)			0.0	\$0	\$0	\$0
Engineering/construction			0.0	\$0	\$0	\$0
Land			0.0	\$0	n/a	\$0
Record Keeping System			0.0	\$0	n/a	\$0
Training/Sampling			0.0	\$0	n/a	\$0
Remediation/Disposal	\$10,000	30-Jul-2007	1-Aug-2008	1.0	\$504	\$504
Permit Costs			0.0	\$0	n/a	\$0
Other (as needed)			0.0	\$0	n/a	\$0

**Notes for DELAYED costs**

The estimated cost to repair the collection system, remediate the spill, and dispose of the dead fish in the ponds. The Date Required is the date of the unauthorized discharge. The Final Date is the date that the unauthorized discharge ceased, the collection system repaired, and remediation completed.

**Avoided Costs****ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal			0.0	\$0	\$0	\$0
Personnel			0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling			0.0	\$0	\$0	\$0
Supplies/equipment			0.0	\$0	\$0	\$0
Financial Assurance [2]			0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]			0.0	\$0	\$0	\$0
Other (as needed)			0.0	\$0	\$0	\$0

**Notes for AVOIDED costs**

NA

**Approx. Cost of Compliance**

\$10,000

**TOTAL**

\$504

# Compliance History

Customer/Respondent/Owner-Operator: CN600131791 City of Arlington Classification: AVERAGE Rating: 4.45  
Regulated Entity: RN104950134 CITY OF ARLINGTON COLLECTION SYSTEM Classification: POOR Site Rating: 100.00  
ID Number(s):  
Location: 101 W ABRAM ST, ARLINGTON, TX, 76010 Rating Date: 9/1/2007 Repeat Violator: NO  
TCEQ Region: REGION 04 - DFW METROPLEX  
Date Compliance History Prepared: October 22, 2007  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: October 22, 2002 to October 22, 2007  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: J. Craig Fleming Phone: (512) 239-5806

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

Effective Date: 08/31/2007

ADMINORDER 2006-0720-WQ-E

Classification: Major

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)

Description: Failure to prevent the unauthorized discharge of wastewater.

Classification: Major

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)

Description: Failure to prevent an unauthorized discharge of wastewater.

Classification: Major

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)

Description: Failure to prevent an unauthorized discharge of wastewater.

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 05/17/2006 (465256)

2 09/18/2006 (461632)

3 10/03/2007 (595398)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

- F. Environmental audits.

N/A

- G. Type of environmental management systems (EMSs).

N/A

- H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CITY OF ARLINGTON  
RN104950134

§ BEFORE THE  
§  
§ TEXAS COMMISSION ON  
§  
§ ENVIRONMENTAL QUALITY

## AGREED ORDER DOCKET NO. 2007-1776-WQ-E

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding City of Arlington ("the City") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the City, represented by Mr. Brad B. Castleberry of the law firm of Lloyd Gosselink Blevins Rochelle & Townsend, P.C., presented this agreement to the Commission.

The City understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the City agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon the City.

The Commission makes the following Findings of Fact and Conclusions of Law:





## **I. FINDINGS OF FACT**

1. The City owns and operates a wastewater collection system at 101 W. Abram St., Arlington, Tarrant County, Texas. The City discharged wastewater into ponds located at the intersection of Central Park Drive and Matlock Road in Arlington, Tarrant County, Texas (the "Site").
2. The City has discharged sewage into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. During an investigation on July 30, 2007, TCEQ staff documented the City did not prevent an unauthorized discharge of wastewater. Specifically, a 15-inch vitrified clay pipe broke releasing an estimated 4,800 gallons of wastewater into an unnamed creek, through a concrete channel, and into two ponds in front of the Franciscan Apartments located at the intersection of Central Park Drive and Matlock Road. The release resulted in the killing of 2,249 fish per the City's letter dated August 3, 2007.
4. The City received notice of the violations on October 8, 2007.
5. The Executive Director recognizes that the City has implemented the following corrective measures at the Site:
  - a. The sewer line was repaired by 3:30 a.m. on July 31, 2007;
  - b. The sewer line was re-cleaned and video inspection conducted by 9:00 a.m. on July 31, 2007, to ensure the repairs were completed and that there was no other damage to the line;
  - c. The clean-up of the fishkill was completed on August 1, 2007;
  - d. Samples were taken along the creek to establish the limits of the affected area;
  - e. Aerators were placed in the creek and ponds, and ran through August 2, 2007; and
  - f. Samples taken at various points along the creek and pond areas on August 3, 2007 determined that no sewage was present.

## **II. CONCLUSIONS OF LAW**

1. The City is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, the City failed to prevent an unauthorized discharge, in violation of TEX. WATER CODE § 26.121(a).
3. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the City for violations of the Texas Water Code and the Texas



Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.

4. An administrative penalty in the amount of Ten Thousand Dollars (\$10,000) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Ten Thousand Dollars (\$10,000) shall be conditionally offset by the City's completion of a Supplemental Environmental Project ("SEP").

### III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The City is assessed an administrative penalty in the amount of Ten Thousand Dollars (\$10,000) as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the City's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Arlington, Docket No. 2007-1776-WQ-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. The City shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Conclusions of Law, Paragraph 4 above, Ten Thousand Dollars (\$10,000) of the assessed administrative penalty shall be offset with the condition that the City implement the SEP defined in Attachment A, incorporated herein by reference. The City's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. The provisions of this Agreed Order shall apply to and be binding upon the City. The City is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
4. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the City if the Executive Director determines that the City has not complied with one or more of the terms or conditions in this Agreed Order.
5. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.



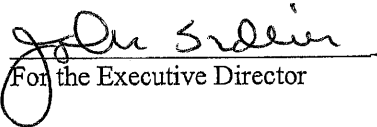
6. This Agreed Order, issued by the Commission, shall not be admissible against the City in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.



## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director

6/30/2008  
Date

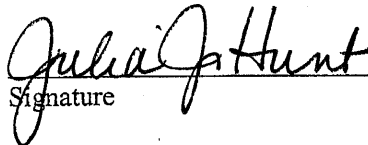
I, the undersigned, have read and understand the attached Agreed Order in the matter of the City of Arlington. I am authorized to agree to the attached Agreed Order on behalf of the City of Arlington, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, the City of Arlington waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
\_\_\_\_\_  
Signature

April 21, 2008  
Date

Julia J. Hunt, P.E.  
Name (Printed or typed)  
Authorized Representative of  
City of Arlington

Director of Water Utilities  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.





**Attachment A**  
**Docket Number: 2007-1776-WQ-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

**Respondent:** City of Arlington

**Penalty Amount:** Ten Thousand Dollars (\$10,000)

**SEP Offset Amount:** Ten Thousand Dollars (\$10,000)

**Type of SEP:** Household hazardous waste and pharmaceuticals collection events  
(Pre-approved concept)

**Location of SEP:** Tarrant County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset the administrative Penalty Amount assessed in this Agreed Order for the Respondent to perform a Supplemental Environmental Project ("SEP"). The SEP Offset Amount is set forth above and such offset is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1) Project Description**

A. Description

The Respondent shall conduct at least two city-wide pharmaceutical collection events to provide city-wide collection and proper disposal of pharmaceuticals at no cost to the public. The events will include collection and proper disposal of pharmaceuticals, including those that may be considered to have endocrine disrupting effects. The Respondent may conduct these events concurrently with planned household hazardous waste collection events. The Respondent shall ensure that the events:

- occur on weekends during daylight hours;
- offer to the public convenient drop-off locations;
- are advertised in flyers placed in utility bills or mail-outs, or advertised in at least one newspaper of large circulation in the community

The Respondent shall collect the pharmaceuticals and shall contract with a licensed hauler to transport and properly dispose of the collected materials. The Respondent shall use the SEP Offset Amount only for the direct cost of implementing the project and no portion shall be spent on administrative costs. SEP monies will be used for equipment such as collection bins, overtime labor of employees, public announcement of the event, and transport and disposal fees. The Respondent shall perform this project in accordance with all federal, state and local laws and regulations.

The Respondent certifies that there is no prior commitment to do these projects and that they are being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by providing for the proper disposal of harmful chemicals that can leach into the soil, water, and air. The events are designed to help alleviate the threat to



wildlife posed by improperly disposed pharmaceuticals, which can cause endocrine disruption and affect other biological processes.

C. Minimum Expenditure

The Respondent shall spend at least the Offset Amount to complete the project described above and comply with all other provisions of this Attachment A. The Respondent recognizes that additional funds over and above the SEP Offset Amount may be necessary to conduct the event.

**2. Performance Schedule**

A. Schedule

Within one year after the effective date of this Agreed Order, the Respondent shall complete the projects and submit all reports described below.

**3. Reporting**

A. Progress Reports

Within 90 days after the effective date of this Agreed Order, the Respondent shall submit a report to the TCEQ indicating the progress made to date on the Projects and setting forth a schedule for achieving completion within the time required above. The Respondent shall thereafter report in 90-day increments on the performance of the Projects.

B. Final Report

Within 45 days after completion of the project, the Respondent shall submit to TCEQ a report which includes:

1. An itemized list and total of costs and expenditures incurred with receipts, copies of checks, or other verifying documentation attached;
2. Manifests showing proper transport and disposal or recycling of collected materials;
3. The quantity of materials collected such as number and types of pharmaceuticals collected, etc;
4. Photographs of the project;
5. A statement of quantifiable environmental benefits; and
6. Any additional information the Respondent believes will demonstrate compliance with this Attachment A.

C. Address

The Respondent shall submit all SEP reports and any requested additional information to the following address:

Litigation Division  
Attention: SEP Coordinator, MC 175



Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**4. Additional Information and Access**

The Respondent shall provide any additional information required by TCEQ staff and allow access to all records related to the receipt and expenditure of SEP funds. The Respondent shall also allow a representative of the TCEQ access to the site of any work being financed in whole or in part by SEP funds. This provision survives the termination of this Agreed Order.

**5. Failure to Fully Perform**

If the Respondent does not perform its obligations under this SEP in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Offset Amount.

In the event of incomplete performance, the Respondent shall include on the check the docket number of this Agreed Order and a note that it is for reimbursement of a SEP. The Respondent shall make the payment for the remaining amount due to "Texas Commission on Environmental Quality" and mail it to:

Litigation Division  
Attention: SEP Coordinator, MC 175  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**6. Publicity**

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

**7. Clean Texas Program**

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program. Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

**8. Other SEPs by TCEQ or Other Agencies**

The SEP identified in this Agreed Order has not been, and shall not be, included as a SEP for the Respondent under any other orders negotiated with the TCEQ or any other agency of the state or federal government.

